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THIEN DINH LE
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8 UNITED STATES DISTRICT COURT
9

10 FOR THE DISTRICT OF NEVADA

11 UNITED STATES OF AMERICA,)
12)
13 Plaintiff,) Case No.: 2:18-cr-00322-APG-BNW
14)
15 v.)
16 THIEN DINH LE,)
17)
18 Defendant.)
19 _____)

20 **STIPULATION AND ORDER TO CONTINUE SENTENCING HEARING**
21 **(Fourth Request)**

22 IT IS HEREBY STIPULATED AND AGREED, by and between Defendant THIEN
23 LE, by and through his attorney (Richard J. Pocker, Esq. of the law firm of Boies Schiller
24 Flexner LLP), and the Plaintiff UNITED STATES OF AMERICA (hereinafter, “the
25 Government”), by and through its attorney (Assistant United States Attorney Kevin Schiff,
26 Esq.), that the Sentencing Hearing in the present case be continued to a date at least ninety (90)
27 days from the present date set for sentencing, October 28, 2020.

28 This Stipulation is entered into for the following reasons:

1. The present case is currently set for sentencing on October 28, 2020. The
present sentencing date was set in the Court’s Order of July 21, 2020 (ECF No. 94)

1 rescheduling the sentencing hearing from July 22, 2020. The Presentence Investigation Report
2 was disclosed on December 6, 2019, in anticipation of the prior February 4th sentencing
3 hearing. Objections to the Presentence Investigation Report were filed on January 14, 2020, in
4 accordance with the Court's order approving a stipulation between the parties. The United
5 States Probation Officer issued a revised Presentence Investigation Report on January 16, 2020.
6 On July 17, 2020, Defendant LE filed his Sentencing Memorandum, and the Government filed
7 its Response on July 20, 2020.

8 2. Given the recommendations of the Presentence Investigation Report, and given
9 the unanticipated complexity of some of the differences between the parties as to calculation of
10 the appropriate Sentencing Guideline range for the present case and the applicability of the
11 statutory "Safety Valve" provisions to Defendant LE's situation, his Sentencing Hearing is an
12 extremely important event in his life, and it can only effectively be conducted in person. An
13 extension of the sentencing date is hereby requested to and including a date no less than ninety
14 (90) days after October 28, 2020. As the Court is painfully aware, the COVID 19 public health
15 crisis continues to have a devastating impact on American society, the world economy, and the
16 functions of the courts. In the Court's Minute Order of July 16, 2020, setting Defendant LE's
17 sentencing for a video hearing on July 22, 2020, the Court made clear that any proceeding
18 going forward on that date would be a video or teleconferencing event, and that a critical
19 hearing such as the sentencing of Defendant LE would require that he consent to proceeding in
20 that manner, as opposed to an in-person hearing in the court room. Given the importance of the
21 imposition of sentence, Defendant LE declines to consent to a video or telephonic sentencing
22 proceeding. He instead desires that his sentencing hearing be continued and postponed to a
23 date and time upon which he can be safely transported to and physically present in the court
24 room to personally advocate and provide information in extenuation and mitigation.

25 3. As the Court is also aware from prior direct correspondence from Defendant LE,
26 as well as multiple filings by him seeking release from pretrial and pre-sentencing confinement,
27 Defendant LE has numerous medical conditions which magnify his vulnerability to the
28 COVID-19 virus. While the Court has declined to release Defendant LE from custody pending

1 imposition of sentence, it has acknowledged the medical risks he faces can be adequately
2 mitigated at his current site of detention. This conclusion notwithstanding, the medical risks
3 attendant to Defendant LE's travel to and from Pahrump are risks he prefers not to undertake
4 under the present circumstances. An additional ninety (90) day continuance of his sentencing
5 date is a reasonable accommodation to this risk. Although Defendant LE has been detained for
6 almost two (2) years pending disposition of his case, his ultimate sentence in the present case is
7 unlikely to be less than this amount of time.

8 4. In addition to the unresolved objections to the Presentence Investigation Report,
9 Defendant LE has filed a Sentencing Memorandum to assist the Court in determining the
10 appropriate sentence to impose. The Government has responded, and also reserves the option
11 of filing a memorandum setting forth its sentencing arguments, or other suitable pre-sentencing
12 filings. Any such memorandum has yet to be filed.

13 5. Defendant LE is presently detained pending sentencing, and does not object to
14 this extension and continuance given the importance of resolving differences between the U.S.
15 Probation office, the Government and Defendant LE regarding "safety valve eligibility" and
16 other Sentencing Guidelines issues. In fact, granting the present Stipulation will enable him to
17 more adequately prepare for what is anticipated to be a potentially complicated sentencing
18 hearing. The COVID-19 public health crisis is also of concern to him given his vulnerable
19 health status, and he would prefer to wait until the risks attendant to his transportation to Court
20 can be mitigated.

21 6. The additional time requested herein is not sought for purpose of delay, but
22 merely to allow counsel sufficient time within which to complete efforts relevant to making
23 their respective sentencing presentations in person before the Court, in this unexpectedly
24 complicated case, to insure that Defendant LE can be sentenced in person, and to protect the
25 medical safety of all participants given the COVID-19 public health crisis. The requested
26 extension, in light of the October 28, 2020 sentencing date, will insure that the parties'
27 preparation is not adversely affected as to disposition of objections to the Presentence
28 Investigation Report and other matters to be addressed at the sentencing hearing.

1 7. This is the fourth request to continue the sentencing hearing in the present case,
2 other than rescheduling initiated by the Court.

3 DATED this 9th day of October, 2020.

4 BOIES SCHILLER FLEXNER LLP

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6 By: /s/ Richard J. Pocker

RICHARD J. POCKER, ESQ.
Counsel for Thien Dinh Le

NICHOLAS A. TRUTANICH
United States Attorney

By: /s/ Kevin Schiff

KEVIN SCHIFF, ESQ.
Assistant United States Attorney

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10 **ORDER**

11 Based on the pending Stipulation of counsel, and good cause appearing,
12 IT IS HEREBY ORDERED THAT the sentencing hearing in the present case be
13 continued to January 27, 2021 at 3:00 p.m. in courtroom 6C.

14 DATED this 12th day of October, 2020.

15 
16 UNITED STATES DISTRICT JUDGE